

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AES NEWENERGY, INC.

Plaintiff

v.

POWERWEB TECHNOLOGIES, INC.

Defendant.

:
:
:
:
:
:
:
:
:
:

Civil Action No. 02-CV-2733

ORDER

AND NOW, this _____ day of _____, 2002, upon consideration of Defendant's Motion to Dismiss Amended Complaint, and any response thereto, it is hereby **ORDERED** that Defendant's Motion to Dismiss Amended Complaint is hereby **GRANTED**, and Plaintiff's Amended Complaint is **DISMISSED**.

J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AES NEWENERGY, INC.	:	
	:	
Plaintiff	:	Civil Action No. 02-CV-2733
	:	
v.	:	
	:	
POWERWEB TECHNOLOGIES, INC.	:	
	:	
Defendant.	:	

DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Powerweb Technologies, Inc. ("Powerweb") moves to dismiss Plaintiff's Amended Complaint. On May 7, 2002, Plaintiff commenced this action with the filing of a Complaint against Defendant Powerweb. On June 17, 2002, Powerweb filed a Motion to Dismiss Plaintiff's Complaint and an accompanying Memorandum of Law. A true and correct copy of Powerweb's Motion to Dismiss Plaintiff's Complaint and the accompanying Memorandum of Law are attached hereto as Exhibits "A" and "B" respectively. Powerweb's Motion to Dismiss sets forth two distinct grounds for dismissal of the Complaint. First, Plaintiff's Complaint fails to allege that Plaintiff is the real party in interest to the contract that forms the basis of Plaintiff's claims. Second, the Complaint fails to state a claim upon which relief can be granted in that Plaintiff's claims are inapposite to the plain language and meaning of the contract. For these two reasons, Powerweb respectfully requested that this court dismiss Plaintiff's Complaint.

On July 19, 2002, Plaintiff filed an Amended Complaint, this time alleging that it is the successor in interest to the contracting party thereby mooting the first argument of

Powerweb's Motion to Dismiss. However, Plaintiff did not amend the Complaint to remedy its failure to state a claim upon which relief can be granted. Instead, Plaintiff filed a substantive response to Powerweb's Motion to Dismiss arguing that despite the contract's plain language to the contrary, Plaintiff is entitled to the relief it is seeking.

Accordingly, Powerweb hereby files this Motion to Dismiss the Amended Complaint by incorporating the arguments set forth in Powerweb's Motion to Dismiss Plaintiff's Complaint and the accompanying Memorandum of Law.

Joseph F. O'Dea, Jr.
Attorney I.D. 48370
Nicholas J. Nastasi
Attorney I.D. 82102
SAUL EWING LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102
(215) 972-7109

Attorneys for Defendant

Date: July 25, 2002

CERTIFICATE OF SERVICE

I, Nicholas J. Nastasi, hereby certify that a true and correct copy of the foregoing Defendant's Motion to Dismiss Amended Complaint was served this date, via hand-delivery, upon the following counsel of record:

Joel M. Sweet
Wolf, Block, Schorr and Solis-Cohen, LLP
1650 Arch St., 22nd Floor
Philadelphia, PA 19102

Nicholas J. Nastasi

Date: July 25, 2002